

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission Review	)	
of the Capacity Charges of Ohio Power	)	Case No. 10-2929-EL-UNC
Company and Columbus Southern Power	)	
Company	)	

**EXELON GENERATION COMPANY, LLC, EXELON ENERGY  
COMPANY, INC., CONSTELLATION NEWENERGY, INC., AND  
CONSTELLATION ENERGY COMMODITIES GROUP, INC'S,  
MEMORANDUM CONTRA AEP OHIO'S MOTION FOR EXTENSION**

Pursuant to Ohio Administrative Code (OAC 4909-1-12), Exelon Generation Company, LLC, Exelon Energy Company, Inc., Constellation NewEnergy, Inc., and Constellation Energy Commodities Group, Inc. (collectively "Exelon") hereby submits this memorandum contra AEP Ohio's Motion for Extension ("Motion"), which was filed in this proceeding on April 30, 2012.

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From the outset of this proceeding, Exelon has advocated for an outcome that would provide a timely and efficient transition to full competition for capacity and energy in the AEP Ohio service territory on terms that are fair and equitable to AEP Ohio and all other stakeholders. In Exelon's opinion, the September 7, 2011 Stipulation and Recommendation (the "Stipulation"), although not perfect, struck the correct balance and accomplished this result to the ultimate benefit of Ohio ratepayers. The Commission, however, thought otherwise, and the Stipulation was rejected on rehearing.

In its Motion for Relief filed February 27, 2012, AEP Ohio sought to reinstate one aspect of the rejected Stipulation. Specifically, AEP Ohio asked the Commission to postpone a return to 100% RPM-based pricing for capacity (as required in the December 8, 2010

Entry) in favor of the “two-tiered approach” to capacity pricing provided for in the Stipulation, with “(1) set aside amounts of RPM-priced capacity available to an initial tier of customers and (2) capacity priced at \$255/MW-Day for amounts above the first tier.” AEP Ohio Mem. at 10.

While AEP Ohio’s original Motion for Relief sought to postpone a return to RPM-based pricing for all shopping customers indefinitely, the Commission’s Entry dated March 7, 2012 did not grant that request in full. Instead, it held that AEP Ohio could profit from the proposed two-tiered pricing scheme for a limited time only. Specifically, the Commission held that after May 31, 2012, *“the rate for capacity under the state compensation mechanism shall revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year.”* March 7, 2012 Entry at para. 26.

Dissatisfied with this temporary windfall, AEP Ohio now seeks to extend the interim relief granted in the March 7 Entry. Whether the Commission should have granted this relief to AEP Ohio in the first instance is not at issue here. Further, it should be noted that AEP Ohio did not appeal the Commission’s Entry, which included the June 1, 2012 return to RPM capacity pricing for all shopping customers<sup>1</sup>. For purposes of this motion, the question is whether there is any legitimate reason or set of facts that have occurred since the March 7<sup>th</sup> Entry which merit delay of the return to RPM pricing and the perpetuation of the anticompetitive advantages that AEP Ohio currently enjoys. The answer is “no.”

Unlike the Stipulation—which sought to balance the varying interests of numerous stakeholders in an effort to reach a global compromise of the complex, inter-related issues being litigated before the Commission and the Federal Energy Regulatory Commission

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<sup>1</sup> FirstEnergy Solutions, the Retail Energy Supply Association and a number of other parties have sought and been granted rehearing of the March 7 Entry. The Commission has not issued a final order on those appeals.

(“FERC”)—the “interim” proposal set forth in AEP Ohio’s Motion for Relief and the current Motion for Extension does not reflect any balancing of interests. Instead, it seeks only to restrict competitive market offerings and to restore an environment where AEP Ohio’s profits are protected at the cost of competition.

The Motion should be denied.

## **I. Background**

In its December 8, 2010 Entry in this proceeding, the Commission required that AEP Ohio charge RPM-based capacity prices during the pendency of the Commission’s review. *See* December 10, 2010 Entry at p. 2 (“[T]he Commission will now expressly adopt as the state compensation mechanism for the Companies the current capacity charges established by the three-year capacity auction conducted by PJM, Inc. during the pendency of this review.”).

After the December 8, 2010 Entry took effect, this capacity charge proceeding was consolidated for hearing with AEP Ohio’s other pending proceedings, including the Company’s application to establish a Standard Service Offer in the form of an Electric Security Plan (the “ESP case” (Nos. 11-346-EL-SSO and 11-348-EL-SSO)). In September 2011, AEP Ohio reached a settlement with Commission Staff and 18 other intervening parties to resolve all of the various proceedings (including two proceedings pending before FERC). A critically important component of that settlement, as documented in the Stipulation, was the structured transition to 100% competitive procurement of both energy and capacity over a period of months. The overwhelming majority of interested parties in the consolidated proceeding, including the non-settling parties, wanted AEP Ohio to use a

competitive process to procure energy and capacity, and the Stipulation achieved that outcome, albeit not as quickly as some would have liked.

On February 23, 2012, the Commission rejected the Stipulation on rehearing. *See* 2/23/2012 Entry on Rehearing. Upon rejection of the Stipulation, AEP Ohio's capacity pricing necessarily reverted back to pre-Stipulation rates—specifically RPM-based pricing required under the December 8, 2010 Entry.

Four days after the Commission rejected the Stipulation, AEP Ohio sought emergency relief to postpone a return to RPM-based pricing for capacity in favor of the two-tiered pricing scheme provided for in the rejected Stipulation. On March 7, 2012, the Commission granted that motion in part, giving AEP Ohio until May 31, 2012 before capacity pricing “shall revert to the current RPM in effect.” 3/7/12 Entry, para 26.

AEP Ohio now seeks to extend that deadline indefinitely.

## **II. AEP OHIO'S STATUS AS AN FRR ENTITY DOES NOT, IN AND OF ITSELF, JUSTIFY FURTHER AVOIDANCE OF MARKET BASED PRICING.**

In its original Motion for Relief and again in its pending Motion for Extension AEP Ohio argues that an immediate return to 100% RPM-based pricing would be “unfair” and “confiscatory” because it would require the company to provide capacity to competitive retail electric suppliers at prices substantially below cost. (Motion for Relief at 4-5; Motion for Extension at 6.) The false premise underlying this argument (which was explicit in the original Motion for Relief and implicit in the Motion for Extension) is that AEP Ohio previously elected to be a Fixed Resource Requirement (“FRR”) entity, and that as an FRR entity it “reasonably relied upon its expected ability to establish cost-based rates should RPM-based rates become unjust and unreasonable.” (Motion for Relief at 5.) While Exelon is not completely unsympathetic to AEP Ohio's position, when understood in context, the

mere fact that AEP Ohio is an FRR entity does not justify the interim protection from competition that it now seeks to extend. Furthermore, the record reflects a serious disagreement over whether any “cost-based” rate which may be appropriate or lawful would even be an embedded cost rate (as AEP Ohio seeks), as opposed to a marginal or incremental cost based rate.

In 2007, AEP Ohio elected to become an FRR entity, in which it would self-supply capacity. At that time, many stakeholders in Ohio acquiesced in the decision to self-supply because they believed that FRR and non-market rates would prove less costly for consumers during the five-year FRR commitment period. (Tr. Vol. VI at 1064-65.) For a period of time, this was correct. As evidenced by a lack of shopping in the AEP Ohio service territory, customers preferred the AEP Ohio rates to competitive rates. (Tr. Vol. VI at 1064-65.) This changed, however, when natural gas prices—the fuel that sets the marginal price of electricity for many hours of the year—collapsed with the discovery of abundant shale gas. (*Id.*) Competitive market prices suddenly were far lower than non-market rates, triggering a wave of retail shopping.<sup>2</sup> However, the fact that the Commission or other market participants did not oppose or even supported AEP Ohio’s FRR election in 2007 does not mean that the company is entitled to avoid RPM-based pricing today. Indeed, the December 8, 2010 Entry (three years after AEP Ohio opted for FRR status) makes it explicitly clear that it is required to use RPM-based pricing.

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<sup>2</sup> See Testimony of J. Dominguez, Tr. Vol. VI at 1064-65 in Case No. 11-346-EL-SSO which had been consolidated for purposes of hearing with the matter at bar. (“AEP is in this situation ... where at one point their rates were favorable to market, and that’s evidenced by the fact that nobody was shopping. Then the market changed, it changed because we had some fundamental drivers in the energy market, the discovery of shale gas that changed the world for all of us competing in this space.”).

Moreover, there is a difference between electing FRR and electing FRR *at any cost*. The election of FRR does not excuse AEP Ohio from its responsibility to explore lower cost capacity options in the market. Indeed, the PJM Tariff explicitly permits FRR entities like AEP Ohio to use the most economic combination of its own units and purchased capacity through bilateral agreements with other suppliers inside and, in certain circumstances, outside of PJM. (See PJM Reliability Assurance Agreement (the “PJM Tariff”) at Schedule 8.1, Section (D)(4).) Thus, nothing prevents AEP Ohio from procuring capacity from the market to fulfill its FRR commitment.

In any event, AEP Ohio has been on notice since December 8, 2010 that it is required to charge RPM-based prices for capacity to competitive electric suppliers. Thus while AEP Ohio complains that a so-called “flash-cut” to 100% market pricing will cause financial hardship, this problem (even if true) is one of AEP Ohio’s own making. Under these circumstances, enforcing the December 8, 2010 Entry according to its terms is neither unfair nor inequitable.

In the end, Exelon cannot support AEP Ohio’s request to extend the deadlines set in the March 7 Entry. Unlike the structured transition to 100% market-based pricing that was a hallmark of the Stipulation (which Exelon supported), AEP Ohio’s current request would effectively curtail competition and postpone market-based pricing indefinitely. And while the Stipulation sought to balance the competing interests of multiple stakeholders and resolve all of the complex, inter-related issues in dispute; AEP Ohio’s pending motion makes no attempt to balance or account for any other parties’ interests. The motion does pay lip service to concerns of “consumer confusion” (as if ratepayers would be dazed and confused by lower rates available from competing suppliers), but such nonsense should be

seen for what it is--a transparent attempt by AEP to avoid RPM-based pricing and to protect its own financial interests at the expense of competition and the consumers who would benefit from it.

### **III. CONCLUSION**

For the foregoing reasons, AEP Ohio's Motion for Extension should be denied.

Dated: May 7, 2012

Respectfully submitted,

s/ David M. Stahl

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## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was served upon the following persons via e-mail this 7th day of May, 2012 and certify that I will serve additional parties as they become known who may file comments in this case.

/s/ M. Howard Petricoff

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Summary: Memorandum Contra Ohio Power Company's Motion for Extension electronically filed by Ms. Lija K Kaleps-Clark on behalf of Exelon Generation Company, LLC and Exelon Energy Company, Inc. and Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.